IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.3654 OF 2007
IN
SUIT NO.2975 OF 1996

Pushkar Dutt Vasudeo Haritwal ... Plaintiff

Vs.

Tata Engg. & Locomotive & Ors. ... Defendants

Ms. Vaishali Chandhay i/b A.R. Dhanuka for the plaintiffs.

Mr. Rajesh Shah for defendants 3 and 4.

CORAM : SMT. RANJANA DESAI, J.

DATED : SEPTEMBER 27, 2007.

P.C.:-

1. This notice of motion is not on my board. By consent of the parties, it is taken on board.

2. This notice of motion is taken out by defendants 3 and 4 praying that the delay in filing the written statement of defendants 3 and 4 be condoned. There is a delay of about four years in filing the written statement.

3. I have heard the learned counsel appearing for the plaintiffs

and the learned counsel appearing for defendants 3 and 4. Rest of the defendants have not chosen to file written statement.

4. In short, the explanation given in the affidavit in support of the notice of motion is that the written statement was prepared in the year 2003. However, through inadvertence, it remained to be filed. Paragraph 5 of the affidavit in support of the notice of motion reads thus:

> *"5. I say that in the Written Statement, the defense which I have taken is that the Defendants No.3 and 4 are bonafide purchaser of the said shares and have purchased the said shares in the open market through the Registered Broker of the Exchange. In the Written Statement, I have also mentioned that out of 100 shares, 50 shares have been sold by the Defendants No.3 and 4 which statement was already made by my Advocate on 28th August, 1996 when the Application was made by the Plaintiff for ad-interim relief. In the premises mentioned herein above, though Written Statement has been affirmed on 14th September, 2007, the defense which has been taken by the Defendants are within the knowledge of the Plaintiff. I say that through inadvertence though the draft of the Written Statement was ready in October, 2003, it could not be filed in the Court. In the circumstances mentioned hereinabove, I say that no prejudice of whatsoever nature will be caused to the Plaintiff. In any even, the Plaintiff can be appropriately compensated for delay in filing the Written*

Statement. It appears that the Plaintiff has also taken time for filing this Affidavit of Evidence."

5. The learned counsel for the plaintiffs has strenuously opposed the condonation of delay. She submits that the explanation is not satisfactory. Having perused the explanation, I feel that the delay deserves to be condoned in the interest of justice after saddling respondents 3 and 4 with heavy costs. Hence, the following order:

6. Delay in filing the written statement of defendants 3 and 4 is condoned on condition that defendants 3 and 4 pay costs quantified at Rs.15,000/- to the plaintiffs. Payment of costs is condition precedent to the filing of the written statement. Costs be paid to the plaintiffs within a period of two weeks from today. Office shall take the written statement of defendants 3 and 4 on file after being satisfied that the costs have been paid.

7. Notice of motion is disposed of.

[SMT. RANJANA DESAI, J.]